

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL CATALDO,

Petitioner,

Case No. 1:03-cv-519

v.

Hon. David W. McKeague¹

JOHN CASON,

Respondent.

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**MEMORANDUM OPINION AND ORDER APPROVING
AND ADOPTING REPORT AND RECOMMENDATION**

This case presents the *pro se* petition of Paul Cataldo, a state prisoner, for a writ of habeas corpus under 28 U.S.C. § 2254. The petition has been reviewed by the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1). On May 19, 2005, the Magistrate Judge issued a 57-page Report and Recommendation which methodically and accurately set out Cataldo's various claims and legal arguments. The Magistrate Judge concluded that all of Cataldo's claims were either without merit or procedurally defaulted. Cataldo filed objections to the Report and Recommendation.

The Court has duly reviewed and carefully considered the arguments made by Cataldo and the Attorney General, as well as the findings of the Magistrate Judge in the Report and Recommendation. The Court finds that the Report and Recommendation is well reasoned and in accord with applicable law.

In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration

¹The Hon. David W. McKeague, United States Circuit Judge for the Sixth Circuit Court of Appeals, sitting by designation.

of those portions of the Report and Recommendation to which objection has been made.² Cataldo's objections are largely repetitive of arguments made in his original petition and memorandum in support, which were rejected by the Magistrate Judge. His further objections regarding procedural default are unpersuasive and do not accord with the state court record. Accordingly, the Court will approve and adopt the Report and Recommendation as the Opinion of the Court.

In anticipation of further appeal, the Court will determine whether a certificate of appealability should be granted. *See* 28 U.S.C. § 2253(c)(2); *Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002). A certificate should issue if Cataldo has demonstrated a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Blanket denial of a certificate of appealability is disapproved. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). Under *Slack*, to warrant a grant of the certificate, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* 484.

The Court has examined petitioner's habeas corpus petition under the *Slack* standards. For the reasons stated in this Memorandum Opinion and Order and the Magistrate Judge's Report and Recommendation, the Court finds that reasonable jurists could not find the Court's ruling debatable or wrong or that the issues presented deserve encouragement to proceed further. Therefore, the

²On September 1, 2005, Cataldo submitted transcripts for two days of testimony taken in state court. The testimony centered on a motion to disqualify the state court trial judge. In performing its *de novo* review of Cataldo's objections, the Court has reviewed portions of the transcript, including those portions referenced by Cataldo in his "motion" to supplement. Accordingly, Cataldo's motion to supplement will be granted.

Court will deny petitioner a certificate of appealability.

Now, therefore,

IT IS HEREBY ORDERED that the Report and Recommendation (Dkt. 80) is **APPROVED** and **ADOPTED** over Cataldo's objections as the Opinion of the Court. Accordingly, petitioner's habeas corpus petition (Dkt. 1) is hereby **DENIED**.

IT IS FURTHER ORDERED that Cataldo's motion to supplement the record (Dkt. 86) is **GRANTED**.

IT IS FURTHER ORDERED that petitioner is hereby **DENIED** a certificate of appealability.

Dated: September 8, 2005

/s/ David W. McKeague
DAVID W. McKEAGUE
UNITED STATES CIRCUIT JUDGE